

# In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF IDAHO )  
RULES OF EVIDENCE (I.R.E.) 803(23) ) ORDER  
and 904 )  
\_\_\_\_\_)

The Court having reviewed a recommendation from the Evidence Rules Advisory Committee to adopt Rule 803(23) and Rule 904 of the Idaho Rules of Evidence, and the Court having reviewed and approved the recommended rule adoptions;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Evidence as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 803(23) be, and the same is hereby, adopted to read as follows:

**Rule 803. Hearsay exceptions; availability of declarant immaterial.**

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(23) **Reserved.** ~~Medical or dental tests and test results for diagnostic or treatment purposes.~~ A written, graphic, numerical, symbolic or pictorial representation of the results of a medical or dental test performed for purposes of diagnosis or treatment for which foundation has been established pursuant to Rule 904, unless the sources of information or other circumstances indicate lack of trustworthiness. This exception shall not apply to:

- (A) psychological tests
- (B) reports generated pursuant to I.R.C.P. 35(a)
- (C) medical or dental tests performed in anticipation of or for purposes of litigation or
- (D) public records specifically excluded from the Rule 803(8) exception to the hearsay rule.

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2. That Rule 904 be, and the same is hereby, adopted to read as follows:

**Rule 904. Authentication of medical or dental tests and test results for diagnostic or treatment purposes.**

(1) **Authentication of items described in Rule 803(23).** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for items described in Rule 803(23) if the proposed exhibit identifies the person or entity who conducted or interpreted the test, the name of the patient, and the date when the test was performed, and notice was given in accord with subsection (2) of this rule.

(2) **Notice.** No less than 45 days before trial, any party intending to offer a document under this rule must serve on all parties a notice, stating that the document is being offered under this rule and shall be deemed authentic and admissible without testimony or further identification, unless objection is filed and served within 14 days of the date of notice, pursuant to subsection (3) of this rule. The notice served on the parties shall include a brief description of the document along with the name, address and telephone number of the document's author or maker, and the notice shall be accompanied by a copy of the document. The notice, but not the accompanying document, shall be filed with the court.

(3) **Objection to authenticity or admissibility.** Within 14 days of notice, any other party may object by filing and serving on all parties a written objection to any document offered under this rule, identifying each document to which objection is made. The grounds for the objection shall be specifically set forth, except objection on the grounds of relevancy need not be made until trial. If the court in a civil case finds that an objection was made without reasonable basis and the document is admitted at trial, the court may award the offering party any expenses incurred and reasonable attorney fees.

(4) **Effect of Rule.** This rule does not restrict argument or proof relating to the weight to be accorded the evidence submitted, nor does it restrict the trier of fact's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. Nothing contained in this rule shall prohibit the admissibility of a written, graphic, numerical, symbolic or pictorial representation in evidence where otherwise admissible.

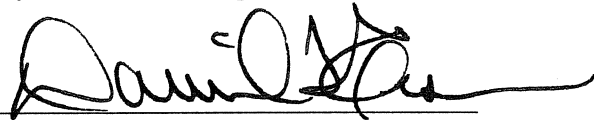
IT IS FURTHER ORDERED that this order shall be effective the 1 day of

January, 2009

IT IS FURTHER ORDERED, that notice of this Order shall be published in one issue of *The Advocate*.

DATED this 23 day of October 2008.

By Order of the Supreme Court



Daniel T. Eismann  
Chief Justice

ATTEST:



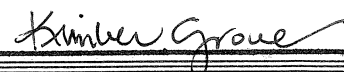
Stephen W. Kenyon, Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 10/28/08

STEPHEN W. KENYON

Clerk

By:  Deputy